

Message Text

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JUSTICE: MURRAY R. STEIN

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R 031518Z JUL 74

FM SECSTATE WASHDC

TO AMEMBASSY BUENOS AIRES

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E.O. 11652: N/A

TAGS: PFOR, SNAR, CPRS, AR

SUBJECT: EXTRADITION - LEGAL REPRESENTATION

REF: BUENOS 3558

1. DEPT BELIEVES REVIEW OF PAST US REQUESTS IS NOT NECESSARY AT THIS TIME. DEPT HAS REVIEWED RECENT CASES AND CONCLUDED THAT EACH WAS LEGITIMATELY REJECTED. FOR EXAMPLE, ARGENTINE COURT RIGHTLY REFUSED EXTRADITION OF LINARES SINCE PAPERS WERE NOT AUTHENTICATED BY ARGENTINE OFFICER HERE AS REQUIRED BY ARTICLE 11 (5)(A) OF 1972 TREATY. LIKEWISE, ARGENTINE COURT PROBABLY CORRECTLY REFUSED TO APPLY NEW TREATY IN RUSSO CASE SINCE RUSSO WAS IN JAIL FROM A TIME BEFORE THE NEW TREATY ENTERED INTO FORCE.

2. DEPT DOES NOT PRESENTLY BELIEVE THAT THERE IS REASON TO BELIEVE ARGENTINE COURTS ARE GTE CONSISTENTLY REFUSING UNGTE TO EXTRADITE PERSONS TO US, I.E. THERE IS NO REASON TO CONCLUDE THAT RECENT REFUSALS REFLECT A DESIGN OR PATTERN.

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3. HOWEVER, IN COURSE OF DISCUSSING PAST CASES AMONGST OURSELVES, WITH BOYWITT, AND WITH REPRESENTATIVES OF GOA, WE HAVE DISCOVERED SEPARATE PROBLEM, THAT OF TOTAL LACK OF ARGENTINE REVIEW OF US CASES PRIOR TO SUBMISSION TO ARGENTINE COURTS. DEPT BELIEVES THIS PROBLEM MUST BE ADDRESSED BY GOA, NOT JUST BY EMBASSY'S HIRING OF LOCAL COUNSEL.

4. AS INDICATED IN DEPTTEL 95958, DEPT WILL REQUEST DEPT JUSTICE TO FUND HIRING OF COUNSEL FOR FUTURE REQUESTS UNTIL SOLUTION CAN BE REACHED. SUCH COUNSEL IS ESSENTIAL SINCE WE NOW KNOW THAT NO ARGENTINE ATTORNEY IS REVIEWING OUR DOCUMENTATION PRIOR TO SUBMISSION.

5. USG SHOULD NOT, HOWEVER, BE REQUIRED TO HIRE SUCH COUNSEL IN ALL FUTURE CASES. THE SECOND SENTENCE OF ARTICLE 19 OF THE 1972 TREATY ENTITLES ARGENTINA TO THE SERVICES OF OUR JUSTICE DEPT WHEN THE GOA MAKES A FORMAL REQUEST. THESE SERVICES INCLUDE FULL REVIEW OF DOCUMENTATION FOR POSSIBLE ERRORS OR GAPS AS WELL AS AN ADVERSARIAL REPRESENTATION IN COURT.

6. DEPT DOES NOT IN ANY WAY EXPECT GOA TO ALTER ITS CIVIL LEGAL SYSTEM. WE DO WISH TO EXPLORE, HOWEVER, WHAT WE BELIEVE TO BE SERIOUS PROBLEM. GOA HAS ORALLY INFORMED US THAT ITS REVIEW OF DOCUMENTATION WILL BE LIMITED TO CERTIFICATION-TYPE CASES. CERTIFICATION, HOWEVER, IS A RELATIVELY MINOR PROBLEM. (WE WILL HANDLE CERTIFICATION IN FUTURE. LACK OF CERTIFICATION IS UNLIKELY TO RE-OCCUR. CERTIFICATION PROBLEM IN PAST CASES HAS BEEN DUE TO UNAVAILABILITY OF ARGENTINE OFFICIALS IN WASHINGTON.) USG NEEDS SUBSTANTIVE REVIEW BY AN ARGENTINE ATTORNEY. FOR NOW, THIS MAY MEAN REVIEW BY PRIVATE COUNSEL. IN THE LONG RUN, HOWEVER, ARTICLE 19 MUST BE AMENDED TO EITHER: 1) ELIMINATE THE RECIPROCAL REPRESENTATION RIGHTS AND DUTIES; OR 2) CLEARLY PRESCRIBE THAT EACH COUNTRY SHALL AFFORD SUBSTANTIVE REVIEW OF DOCUMENTATION TO POINT OUT POTENTIAL ERRORS AND WEAK POINTS AND THUS ALLOW REQUESTING PARTY TO ATTEMPT TO CORRECT ERRORS, COVER WEAK POINTS, OR AT LEAST SUGGEST LIMITED OFFICIAL USE

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ARGUMENTS REBUTTING ALLEGED WEAK POINTS. NEGOTIATIONS WITH GOA MAY SHOW THAT SECOND ALTERNATIVE IS IMPOSSIBLE DUE TO ARGENTINE LEGAL SET-UP. IN THAT EVENT, DEPT BELIEVES REQUIREMENT SHOULD BE REMOVED FROM TREATY. ON THE OTHER HAND, NEGOTIATIONS AND AMENDED TREATY TEXT MAY SOMEHOW PROVIDE LEGAL BASIS FOR GOA TO AFFORD THE TYPE REVIEW WE BELIEVE NECESSARY.

7. DEPT REQUESTS EMB ASSESSMENT RE BEST MEANS OF
APPROACHING GOA ON THIS PROBLEM AS REQUESTED PER DEPTTEL
95958. SISCO

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